IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5689 OF 2005

-1. Shri Suryakant Mahadeo Pandharkame,
aged about 34 years, Hindu, Indian
Inhabitant, residing at Dandguri, Taluka
Shrivardhan, District Raigad.

-2. Dattatraya Mahadeo Pandharkame,
aged about 37 years, Proprietor Hotel
Sairaj, At & Post Borlipanchatan,
Taluka Shrivardhan, District Raigad. ...Petitioners.

Vs.

-1. State of Maharashtra,
through Principal Secretary, Home
Department, Mantralaya, Mumbai.

-2. Maharashtra State Human Rights
Commission, 9, Hazarimal Somani
Marg, Opp. C. S. T., Mumbai-400 001.

-3. The Collector of Raigad,
(State Excise Department), Alibag,
District Raigad.

-4. Superintendent of Police,
Alibaug, District Raigad. ...Respondents.

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Mr. D.B. Sawant for the Petitioner.
Mr. V.P. Malvankar, AGP for Respondent Nos.1, 3 and 4.

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CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

September 19, 2005.

ORAL JUDGMENT (PER F.I. REBELLO, J.):

Rule. Heard forthwith.

2. Petitioner No.1 had filed a complaint before Respondent No.2. The grievance of Petitioner No.1 was that though he had filed a complaint with the Shriwardhan Police Station, PSI Shashikant Sawant did not record properly the complaint of assault, theft of valuables and damage to the property of the complainant in the incident which took place on 17th August 2004. The other contention as noted by Respondent No.2 is that the complainant and his associates were threatened by the PSI to involve them in offence in which they would be confined to jail for about two years. It is not necessary to refer to other facts of the matter. Respondent No.2 has also noted that issue also arises relating to the propriety of granting licence or permit to run liquor bar at the village where most of the people belonging to Scheduled Castes and Scheduled Tribes reside. After considering various contentions, the Learned Commission recommended to Respondent No.3 that he shall review the grant of licence to the complainant or his elder brother and revoke the same in the teeth of strong circumstances in order to protect the human rights of the

people unprivileged or underprivileged and consider a case for shifting of the place of business outside the Grampanchayat limit.

3. Petitioner No.2 who is the holder of the licence, was not a party before Respondent No.2, nor was given any notice by Respondent No.2 to appear before him and give his say in the matter. It is this order which has been challenged by the Petitioners over here.

4. On behalf of the Petitioners, the Learned Counsel submits that Respondent No.2 ought not to have passed an order as passed, firstly as the grant of liquor licence is governed by the provisions of the Bombay Prohibition Act, 1947 and there are authorities under the Act who can cancel the licence bearing in mind Section 11A of the Act. It is secondly contended that no order could have been passed against Petitioner No.2 who is the holder of the licence without giving him an opportunity of being heard. That being the case, there is infraction of the principles of natural justice and fair play and that on that count alone, the impugned order dated 30th June 2005 is also liable to be set aside.

5. We have heard Learned Counsel for the parties. The real question is whether Respondent No.2 could have assumed jurisdiction in the manner exercised on the complaint filed by Petitioner No.1 against the Police Officers for failure to register the complaint made by him properly. We do appreciate and understand the concern of Respondent No.2 in so far as protecting the rights of underprivileged are concerned, but that has to be within the parameters of the jurisdiction vested in Respondent No.2. Once there is a provision of cancellation of the licence under the provisions of the Bombay Prohibition Act, 1949, then at the highest, considering the power conferred on Respondent No.2, if it came to the conclusion that there was violation of human right then to refer the matter in terms of Section 11A to the Competent Authority for taking action in accordance with law. It was not within the jurisdiction of Respondent No.2 to have *sou motu* issued directions for revoking the licence in favour of Petitioner No.2 in order to protect the rights of the people without the procedure of Section 11A being complied with. On that count alone, the impugned order is liable to be set aside.

6. The other aspect of the matter which as noted earlier, is

that the licence stands in the name of Petitioner No.2. Petitioner No.2 was not a party before Respondent No.2, nor was Petitioner No.2 given notice for appearance before the impugned order dated 30th June 2005 was passed. Thus, the impugned order suffers from the violation of the principles of natural justice and fair play. On that count also, the impugned order is liable to be set aside.

7. For the aforesaid reasons, rule is made absolute in terms of prayer clause (a). It is made clear that if any of the villagers are affected, it is open to them to take steps in accordance with law which they are entitled in law.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)